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05/02/2005

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18766

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272 7590 06/02/2009
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EXAMINER

GODENSCHWAGER, PETER F

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1796

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Arguments

Applicant's arguments filed May 18, 2009 have been fully considered but they are not persuasive. Applicant's arguments directed to newly amended claims filed May 18, 2009 are moot as the amendment has not been entered.

With regards to Teleki, Applicant argues that Teleki teaches the opposite arrangement of layers of the instant claims. However, by its very nature an apron may be worn with either side closer to one's body as an apron has two sides, both of which may be placed next to one's body. Therefore a layer comprising U will implicitly be *capable* of being placed closer to the body than another layer. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. *If the prior art structure is capable of performing the intended use, then it meets the claim.* Regardless of whether an apron is generally considered to be worn in either of two directions, it is still *capable* of being worn in either of two directions. As the claims are not to a method of wearing the apron but to the apron itself, the prior art structure meets the claim as it is capable of being worn in either of two directions.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "design features which constrain a wearer to wear the protective apron in one way" and also the features of the aprons described in US Pat. No. 4,766,608 to Cusick et al.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER F. GODENSCHWAGER whose telephone number is (571)270-3302. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. F. G./
Examiner, Art Unit 1796
May 26, 2009

/Mark Eashoo/
Supervisory Patent Examiner, Art Unit 1796